LIM HUI JIN v. INSPEKTOR MUHAMMAD NOORARIFF SHAH ZAINUDDIN & ORS

HIGH COURT MALAYA, IPOH
MOHD RADZI HARUN JC
[CIVIL SUIT NO: AA-22NCVC-136-11-2018]
29 AUGUST 2019

CIVIL PROCEDURE: *Striking out – Application for – Writ and statement of claim – Money laundering offences – Freezing and seizure order of plaintiff's bank account – Plaintiff's claim against bank alleging breach of statutory duties for its action or inaction to release plaintiff's account upon expiration of seizure order – Whether bank exonerated for all its actions against plaintiff's account – Whether bank liable for any prosecution, action or suit – Whether plaintiff estopped from raising issue – Whether plaintiff's claim obviously unsustainable – Whether abuse of court process – Rules of Court 2012, O. 18 r. 19(1)(a), (b) and/or (d) – Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 50(2), 77*

CRIMINAL LAW: *Money laundering – Offences – Freezing and seizure order of plaintiff's bank account – Plaintiff's claim against bank alleging breach of statutory duties for its action or inaction to release plaintiff's account upon expiration of seizure order – Bank applied to strike out plaintiff's writ and statement of claim – Whether bank exonerated for all its actions against plaintiff's account – Whether bank liable for any prosecution, action or suit – Whether plaintiff estopped from raising issue – Whether plaintiff's claim obviously unsustainable – Whether abuse of court process – Rules of Court 2012, O. 18 r. 19(1)(a), (b) and/or (d) – Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 50(2), 77*

The application by the sixth defendant ('D6') in encl. 6 was for the striking out of the plaintiff's writ and statement of claim against D6, pursuant to O. 18 r. 19(1)(a), (b) and/or (d) of the Rules of Court 2012 ('ROC 2012'). On 24 April 2014, an investigation commenced against the plaintiff's mother under the provisions of the Anti-Money Laundering and Anti Terrorism Financing Act 2001 ('AMLATFA') (now known as the Anti-Money Laundering, Anti Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('AMLATFPUA') *vide* s. 3 of the Anti-Money Laundering and Anti-Terrorism Financing (Amendment) Act 2014. Consequent to the said investigation, a freezing order was issued against the plaintiff's account at D6's bank under s. 44(1) of the AMLATFA. On 11 September 2014, a seizure order was issued by the Public Prosecutor on the said plaintiff's account pursuant to s. 50 of the new AMLATFPUA on the basis that the monies in the plaintiff's account were the subject matter of an offence under s. 4(1) of the AMLATFPUA, alleged to have been committed by Tan Hoo

Eng, who has since been charged with 21 counts of money laundering under s. 4(1)(a) of the AMLATFPUA. The AMLATFPUA contained a provision s. 52A which provides that a seizure order issued under s. 50(1) ceased to have effect (a) if the person from whom the property was seized had not been charged with an offence under the AMLATFPUA on expiration of the seizure order, which was 12 months from the date of the seizure order; or (b) if the person from whom the property was seized had not been charged with an offence under the AMLATFPUA after the expiration of a prior freezing order, if any, which was 12 months after the issuance of the freezing order. As there was a prior freezing order issued on the plaintiff's account before it was seized on 11 September 2014, the seizure order issued on the plaintiff's account on 11 September 2014 expired on 23 June 2015 *ie* 12 months after the issuance of the freezing order on 24 June 2014 and 10 September 2015 *ie* 12 months after the issuance of the seizure order on 11 September 2014. There was no prosecution preferred against the plaintiff. Pursuant to s. 56(3) of the AMLATFPUA, as no prosecution was brought against the plaintiff and no forfeiture was ordered against the plaintiff's said account under s. 56(1), the said account shall, at the expiration of 12 months from the date of the seizure order, be released to the plaintiff. Upon the expiration of the said 12 months period, the plaintiff wrote numerous letters to D3 and D6 to obtain confirmation that the plaintiff could use his account at D6's bank. As his account continued to be seized, the plaintiff commenced an action against D6 *vide* originating summons ('2016 OS) to obtain for, among others, the release of his account with D6's bank. D6 subsequently obtained leave from the court to bring in D3, D4 and D5 as its co-defendants in the said action. Upon the High Court's dismissal of the 2016 OS, the plaintiff appealed to the Court of Appeal, which was allowed. See: *Lim Jui Hin v. CIMB Bank Berhad & Ors* [2018] 8 CLJ 327 ('*Lim Hui Jin*'). The decision of the Court of Appeal in *Lim Hui Jin* formed the main basis of the current suit filed by the plaintiff against the defendants. As for D6, the plaintiff claimed that D6 had breached its statutory duties for its action or inaction to release the plaintiff's account at D6's bank upon the expiration of the seizure order. Thus, the plaintiff submitted that due to D6's breaches, D6 should be held liable for tortious acts against the plaintiff. D6 premised its application to strike out the plaintiff's action pursuant to O. 18 r. 19(1)(b) and/or (d) of the ROC 2012 as the action against D6 was frivolous, vexatious and an abuse of the court process.

Held (allowing application with costs):

(1) Upon analysing the Court of Appeal's decision in *Lim Hui Jin* in respect of D6, it was unequivocally clear that D6 had been exonerated for all its actions against the plaintiff's account at D6's bank due to 'the bank's predicament ... given the threat of severe penal sanction by s. 50(3) ...'. This court had looked at the writ and the statement of claim filed by the plaintiff and had seized itself of the history of the case against D6. It was conspicuously clear that the claim by the plaintiff, on the face of it, was

obviously unsustainable against D6. The main crux and reasons for the existence of the plaintiff's claim against D6, the *raison d'etre*, had been dealt with by the Court of Appeal in *Lim Hui Jin*. The decision and remarks made by the Court of Appeal in *Lim Hui Jin* supported the finding that the plaintiff could not be allowed to take D6 to task for its statutory compliance at that time against the plaintiff's account. (paras 22, 27 & 28)

(2) The plaintiff's argument on D6's breach of its statutory duty had been addressed by the Court of Appeal. Although the main issue before the Court of Appeal in *Lim Hui Jin* was on the release of monies, the finding on that issue was linked to D6's exercising of its statutory duties. It had been dealt with extensively by the court. The plaintiff was therefore estopped from raising this issue again now against D6. Further, by operation of ss. 50(2) and 77 of the AMLATFPUA and having been positively exonerated of any form of liability and wrongdoing by the Court of Appeal, D6 could not be liable for any prosecution, action or suit. D6 had been declared an innocent party *ab initio*. (paras 32-34)

(3) The authorities responsible for the freezing and seizure orders must be solely held responsible for their wrong decisions to continue with the freezing and seizure after the expiry date of the seizure order. In this case, the first to fifth defendants were the said authorities. The party, in this case the sixth defendant, CIMB, could not be held equally responsible. (*Raqeem Rizqin Enterprise & Yang Lain lwn. Ketua Polis Negara & Satu Lagi*). (para 37)

(4) The plaintiff's claim against D6 tantamount to re-agitating the same matter which had been finally adjudicated by the Court of Appeal, an action which was an abuse of the process of the court. As the plaintiff's action against D6 was obviously unsustainable, and the course of action was frivolous and vexatious and an abuse of the court process, the only option available to this court was to strike out the plaintiff's action against D6 pursuant to O. 18 r. 19(1)(a), (b) and (d) of the ROC 2012. (paras 35 & 38)

Case(s) referred to:

Abdul Hamid Rahmat & Anor v. Development & Commercial Bank Bhd & Anor [1993] 1 CLJ 35 HC ***(refd)***

Arnold and Johnson v. Gorewood [2002] 2 AC 1 ***(refd)***

Ashby Construction Sdn Bhd v Bank Negara Malaysia [2014] 5 CLJ 955 HC ***(refd)***

Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd [1995] 3 CLJ 783 SC ***(refd)***

Bandar Builder Sdn Bhd & Ors v. United Malayan Banking Corporation Bhd [1993] 4 CLJ 7 SC ***(refd)***

Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd [2001] 2 CLJ 321 CA ***(refd)***

Chemfert Sdn Bhd & Anor v. Lim Hua [2010] 7 CLJ 491 CA ***(refd)***
Datuk Ooi Han Eng v. Soh Huang Siah [2010] 1 LNS 343 CA ***(refd)***
Farlim Properties Sdn Bhd v. Goh Keat Poh & Ors (And Other Appeals) [2003] 4 CLJ 505 CA ***(refd)***
Golden Vale Golf Range & Country Club Sdn Bhd v. Hong Huat Enterprise Sdn Bhd [2008] 6 CLJ 31 CA ***(dist)***
Hi-Summit Construction Sdn Bhd v. Konsortium Lapangan Terjaya Sdn Bhd & Ors [2014] 1 LNS 999 CA ***(refd)***
Henderson v. Henderson [1843] 3 Hare 100 ***(refd)***
Jamir Hassan Najir Hassan v. Kang Min [1991] 3 CLJ 2490; [1991] 2 CLJ (Rep) 773 HC ***(refd)***
Lim Hui Jin v. CIMB Bank Bhd & Ors [2018] 8 CLJ 327 CA ***(refd)***
Meeriam Rosaline Edward Pau & Orsl v. William Singam Raja Singam [2010] 1 LNS 2032 CA ***(refd)***
Mukhlis M Nur v. PP [2014] 1 LNS 1203 CA ***(refd)***
Noor Jahan Abdul Wahab v. Md Yusoff Amanshah & Anor [1994] 2 CLJ 249 HC ***(refd)***
Raqeem Rizqin Enterprise & Yang Lain lwn. Ketua Polis Negara & Satu Lagi [2019] 8 CLJ 41 FC ***(refd)***
Rosli Dahlan v. Tan Sri Abdul Gani Patail & Ors [2014] 9 CLJ 225 HC ***(dist)***
Sarjit Singh Khaira v. Government of the State of Sarawak & Anor [1990] 2 CLJ 95; [1990] 3 CLJ (Rep) 59 HC ***(refd)***
See Thong & Anor v. Saw Beng Chong [2012] 1 LNS 817 CA ***(refd)***
Seruan Gemilang Makmur Sdn Bhd v. Badan Perhubungan UMNO Negeri Pahang Darul Makmur (via his secretary Dato' Ahmad Tajudin Sulaiman [2010] 8 MLJ 57 ***(refd)***

Legislation referred to:

Anti-Money Laundering and Anti-Terrorism Financing Act 2001, ss. 44(1), (5), 50(2), (3), 77
Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, ss. 4(1)(a), 50(1), (2), 52A, 56(1), (3), 77
Public Authorities Protection Act 1948, s. 2
Rules of Court 2012, O. 18 r. 19(1)(a), (b), (d)

For the plaintiff - Amir Faliq Mohamad Jamil & Siti Nor Syahidah Ismail; M/s Amir Faliq & Syahidah
For the 1st-5th defendants - Malarselvi Sanmugam; SFC
For the 6th defendant - Jeyanthini & Sharon; M/s Shearn Delamore & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Radzi Harun JC:

Introduction

[1] The application by the sixth defendant ("D6") in encl. 6 is for the striking out of the plaintiff's writ and statement of claim against D6, pursuant to O. 18 r. 19(1)(a), (b) and/or (d) of the Rules of Court 2012 ("ROC 2012").

[2] Having perused the cause papers before me, which include the notice of application and the relevant affidavits, the plaintiff's writ and statement of claim, the defendants' statement of defence, and the written submissions of learned counsel for all parties, I had allowed the application with costs at RM3,000 to D6.

[3] The plaintiff is aggrieved by the decision and now filed his appeal before Your Lordships. Below are my grounds.

Background

[4] Following reports lodged by one Lim Keck Eng and D1 against Tan Hoo Eng, the plaintiff's mother, an investigation commenced on 24 April 2014 under the provisions of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ("AMLATFA") (now known as the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLATFPUA") *vide* s. 3 of the Anti-Money Laundering and Anti-Terrorism Financing (Amendment) Act 2014 (Act A1467). By virtue of Gazette No. P.U. (B)400/2014, Act A1467 came into effect on 1 September 2014.

[5] Consequent to the said investigation, a freezing order was issued against the plaintiff's account no. 25164 at D6 Bank on 24 June 2014 under s. 44(1) of the AMLATFA as the said account was suspected to have been involved in the offences alleged to be committed by Tan Hoo Eng.

[6] Paragraph 3 of the freezing order expressly states that the order was valid for 90 days, which means it would cease to have effect on 21 September 2014 if the plaintiff was not charged with an offence under the AMLATFA or a terrorism financing offence, as the case may be. The 90-day period is prescribed by s. 44(5) of the AMLATFA.

[7] On 11 September 2014, a seizure order was issued by the Public Prosecutor on the said plaintiff's account pursuant to s. 50 of the new AMLATFPUA.

[8] The basis for the seizure order was that the monies in the plaintiff's account are the subject matter of an offence under s. 4(1) of the AMLATFPUA, alleged to have been committed by Tan Hoo Eng, who has since been charged with 21 counts of money laundering under s. 4(1)(a) of AMLATFPUA before the Sessions Court at Ipoh, Perak.

[9] The AMLATFPUA contains a new provision of s. 52A, which is not found in the AMLATFA, which provides that a seizure order issued under s. 50(1) ceases to have effect in the following two situations:

(a) if the person from whom the property was seized has not been charged with an offence under the AMLATFPUA on expiration of the seizure order, which is 12 months from the date of the seizure order; or

(b) if the person from whom the property was seized has not been charged with an offence under the AMLATFPUA after the expiration of a prior freezing order, if any, which is 12 months after the issuance of the freezing order.

[10] As there was a prior freezing order issued on the plaintiff's account before it was seized on 11 September 2014, the seizure order issued on the plaintiff's account on 11 September 2014 expired on the following two dates:

(i) on 23 June 2015, ie, 12 months after the issuance of the freezing order on 24 June 2014.

(ii) on 10 September 2015, ie, 12 months after the issuance of the seizure order on 11 September 2014.

[11] There was no prosecution preferred against the plaintiff.

[12] Pursuant to sub-s. 56(3) AMLATFPUA, as no prosecution was brought against the plaintiff and no forfeiture was ordered against the plaintiff's said account under sub-s. 56(1), the said account shall, at the expiration of 12 months from the date of the seizure order, be released to the plaintiff.

[13] Upon the expiration of the said 12 months period (10/9/2015), the plaintiff's solicitors wrote numerous letters to D3 and D6 to obtain confirmation that the plaintiff could use his account at D6's bank.

[14] As his account continued to be seized, the plaintiff commenced an action against D6 *vide* Originating Summons No. AA-24NCVC-226-05-2016 ("2016 OS") to obtain order for, among others, the release of his account with D6 bank. D6 subsequently obtained leave from the court to bring in D3, D4 and D5 as its co-defendants in the said action. Upon the Ipoh High Court's dismissal of the 2016 OS, the plaintiff appealed to the Court of Appeal.

[15] The plaintiff's appeal was allowed. See: *Lim Hui Jin v. CIMB Bank Berhad & Ors* [2018] 8 CLJ 327.

[16] With regards to the plaintiff's action against D6, Abdul Rahman Sebli JCA (as His Lordship then was) delivering the unanimous decision of the Court of Appeal held:

> [19] As for the first respondent (CIMB Bank), its answer to the appellant's claim was that it had been advised by the second and third respondents to hold on to the freezing and seizure orders as there is a criminal proceeding pending against the appellant's mother under the AMLATEPUA and as such the two orders should continue to operate against the appellant's account until after the disposal of the criminal proceeding.
>
> ...

[21] CIMB Bank's argument was that unless and until the seizure order is varied or revoked by the Public Prosecutor, it is in no position to release the appellant's account or to allow him to operate it until further notice by the second and third respondents. The bank's predicament is understandable given the threat of severe penal sanction by s. 50(3), which reads:

> (3) Any person who fails to comply with an order of the Public Prosecutor under subsection (1) commits an offence and shall on conviction, be liable to a fine not exceeding five times the amount which was parted with, dealt in or otherwise disposed of in contravention of the Public Prosecutor's order or five million ringgit, whichever is the higher or to imprisonment for a term not exceeding seven years, or to both, and in the case of a continuing offence, shall in addition be liable to a fine not exceeding five thousand ringgit for each day or part thereof during which the offence continues to be committed.

...

[24] Clearly, once the seizure order had expired by effluxion of time, there is nothing for the Public Prosecutor to vary or revoke. To hold otherwise would be to violate art. 13(1) of the Federal Constitution, which provides that no person shall be deprived of property save in accordance with law.

...

[27] .... In the present case, the seizure order on the appellant's account is no longer in force as it had expired, the first time on 23 June 2015 (12 months after the issuance of the freezing order on 24 June 2014) and the second time on 10 September 2015 (12 months after the issuance of the seizure order itself on 11 September 2014).

...

[42] Since there is no dispute that the freezing and seizure orders have ceased to have effect, the only issue before the court was whether the appellant's account should be released on expiration of the freezing and seizure orders. Having regard to the provisions of s. 44(5) and s. 52A of the AMLATEPUA, the answer to the question has to be in the affirmative.

[43] For all the reasons aforesaid, we allow the appellant's appeal with costs, to be borne by the second, third and fourth respondents and payable to the appellant. We set aside the order of the High Court dated 23 May 2017 and we allow prayer (1) of the appellant's originating summons.

Plaintiff's Action Against D6

[17] The decision of the Court of Appeal in *Lim Hui Jin (supra)*, formed the main basis of the current suit filed by the plaintiff against the defendants.

[18] As for D6, the plaintiff claimed that D6 had breached its statutory duties for its action or inaction/omission to release the plaintiff's account no. 25164 at D6 bank upon the expiration of the seizure order. Due to the D6's breaches, D6 shall be held liable for tortious act against the plaintiff, and consequentially the plaintiff shall be entitled to all the reliefs prayed against D6.

D6's Striking Out Application

[19] D6 premised its application to strike out the plaintiff's action pursuant to O. 18 r. 19(1)(b) and/or (d) of the ROC 2012 as the action against D6 is frivolous, vexatious and an abuse of the court process mainly on the following grounds:

(i) The plaintiff's claim against D6 is bared by the doctrine of *res judicata* and issue estoppel as it was premised on similar facts, issues and matters raised and/or ought to have been raised at the 2016 OS: *Henderson v. Henderson* [1843] 3 Hare 100; *Asia Commercial Finance (M) Bhd v. Kawal Teliti Sdn Bhd* [1995] 3 CLJ 783; [1995] 3 MLJ 189;

(ii) The matters pleaded by the plaintiff pertaining to wrongful seizure of the plaintiff's account at D6 bank are within the plaintiff's knowledge all along as it pertains matters that transpired in 2014, way before the 2016 OS;

(iii) Allowing the plaintiff to canvass similar issues and matters that had been raised, dealt with and decided in the 2016 OS would mean to allow multiplicity of action and litigation by instalments;

(iv) Plaintiff's action against D6 is prohibited by ss. 50(2) and 77 of AMLATFA: *Ashby Construction Sdn Bhd v Bank Negara Malaysia* [2014] 5 CLJ 955;

(v) The Court of Appeal in *Lim Hui Jin (supra)* had taken cognisance that D6 was advised by D3-D4 to continue the freezing and seizure actions due to the pending criminal proceedings against the plaintiff's mother Tan Hoo Eng at the Ipoh Sessions Court (see para. 19 of *Lim Hui Jin (supra)*);

(vi) The Court of Appeal in that case had also taken cognisance that D6 was in a predicament of facing penal sanction under s. 50(3) of AMLATFA (see para. 21 of *Lim Hui Jin (supra)*);

(vii) Finally, the Court of Appeal in allowing the plaintiff's appeal in the same case had ordered costs against D3, D4 and D5 but not D6 (see para. 43 of *Lim Hui Jin (supra)*);

[20] In his response, the plaintiff's case against D6's application were, in the mains, as follows:

(i) The plaintiff contended that his current action against D6 only accrued after the decision of the Court of Appeal in *Lim Hui Jin (supra)*. As the plaintiff's action can only be pursued against D6 after the said decision, whatever decision by the Court of Appeal towards D6 does not in any manner estopped the plaintiff from pursuing his current action against the defendants, including D6.

(ii) There is no way that the plaintiff's current action and claims could have been raised at the earlier 2016 OS before the High Court, and at the Court of Appeal. *Res judicata* does not step in and the doctrine of estoppel does not apply against the plaintiff.

(iii) The action by D6 to bring in D3, D4 and D5 as the second, third and fourth defendants in the 2016 OS estopped D6 from raising the issue of *res judicata*. This is because that action by D6 had changed the nature of the 2016 OS where the plaintiff was barred from claiming damages by s. 2 of the Public Authorities Protection Act 1948 which provides:

> (a) the suit, action, prosecution or proceeding shall not lie or be instituted unless it is commenced within thirty-six months next after the act neglect or default complained of or, in the case of a continuance of injury or damage, within thirty-six months next after the ceasing thereof;

(iv) That the doctrine of estoppel does not apply in his action as his rights to claim damages for D6's breach of statutory duty has not been determined either by the High Court in the 2016 OS or the Court of Appeal in *Lim Hui Jin (supra)*, citing para. [29] of the decision as follows:

> [29] It is important to bear in mind that the proceeding in the High Court was not a proceeding to forfeit the monies in the appellant's account. The sole purpose of the proceeding was to determine whether the appellant's account should be released, given the fact that he has not been charged with an offence under the AMLATEPUA after the expiration of the freezing and seizure orders.

(v) There was no abuse of the court process nor filing of actions in instalment on the part of the plaintiff when the plaintiff could not have raised the issues without the benefit of him knowing the findings of the Court of Appeal.

(vi) This court should rely on the more lenient and flexible approach in dealing with the rule pertaining to abuse of process and *res judicata*: *Chee Pok Choy & Ors v. Scotch Leasing Sdn Bhd* [2001] 2 CLJ 321; [2001] 4 MLJ 346; *Arnold and Johnson v. Gorewood* [2002] 2 AC 1;

(vii) The applicability of s. 77 would depend on the facts and circumstances of that particular case. In any event, s. 77 AMLATFA was never considered by the Court of Appeal in *Lim Hui Jin (supra)*: *Rosli Dahlan v. Tan Sri Abdul Gani Patail & Ors* [2014] 9 CLJ 225; *Golden Vale Golf Range & Country Club Sdn Bhd v. Hong Huat Enterprise Sdn Bhd* [2008] 6 CLJ 31;

(viii) D6 selectively quoted certain paragraphs of the Court of Appeal's judgment in *Lim Hui Jin (supra)* to give the misleading impression that the plaintiff's appeal against D6 was dismissed and the court decided in D6's favour, when instead the said decision must be analysed as a whole: *Mukhlis M Nur v. PP* [2015] 2 MLJ 55.

Finding

[21] It is unequivocally clear to this court that the Court of Appeal in *Lim Hui Jin (supra)* in allowing the appeal by the plaintiff had in effect issued the following orders *vis-a-vis* D6:

(i) ordered for the release of all monies together with all accrued interest in the plaintiff's account at D6 bank that was held/frozen and seized by D3, D4, D5 and D6;

(ii) analysed D6's explanation that it continued its action to freeze/seize the plaintiff's account due to the advise/instruction by the DPP and unless and until the seizure order is varied or revoked by the Public Prosecutor, D6 is in no position to release the plaintiff's account or to allow him to operate it;

(iii) made a finding that "the bank's predicament is understandable given the threat of severe penal sanction by s. 50(3)" upon making the analysis of D6's stated explanation;

(iv) made a finding that since there is no dispute that the freezing and seizure orders have ceased to have effect, the plaintiff's account should be released on expiration of the freezing and seizure orders;

(v) ordered that costs to be borne by the DPP, police and the Government, whilst D6 was not ordered to join these parties to bear the costs.

[22] I noted that learned counsel for D6 had argued that the Court of Appeal held that "D6 was not liable in respect of the actions taken by D3-D5 as D6 was merely complying with the directions of D3-D5". This court agreed with learned counsel for the plaintiff that such words could not be found in any part of the judgment of the Court of Appeal in *Lim Hui Jin (supra)*. However, it is this court's findings upon analysing the Court of Appeal's decision respecting D6, as specifically enumerated in paras. 19, 21, 24, 27, 42 and 43 of Their Lordships' decisions, it was unequivocally clear that D6 had been exonerated for all its actions against the plaintiff's account at D6 bank due to "(t)he bank's predicament … given the threat of severe penal sanction by s. 50(3) …". (See para. [16] above).

[23] The principles governing O. 18 r. 19 application have been set out in a long line of authorities, which include the oft-quoted *Sarjit Singh Khaira v. Government of The State of Sarawak & Anor.* [1990] 2 CLJ 95, 97; [1990] 3 CLJ (Rep) 59 and *Bandar Builder Sdn. Bhd. & Ors. v. United Malayan Banking Corporation Bhd* [1993] 4 CLJ 7. In a nutshell, the gist of the decisions is that where a claim or pleading is shown to be obviously unsustainable, any limb of O. 18 r. 19(1) may be invoked to strike out that unsustainable claim.

[24] This court is fully conscious that in determining an application under O. 18 r. 19 of the ROC, it cannot deal with the merit of the substantive claim. Neither could this court attempt to resolve the conflicts of evidence during this stage of striking out proceedings (See: *Meeriam Rosaline Edward Paul & Ors v. William Singam Raja Singam* [2010] 1 LNS 2032; [2010] 3 MLJ 541 and *Noor Jahan Abdul Wahab v. Md Yusoff Amanshah & Anor* [1994] 2 CLJ 249; [1994] 1 MLJ 156).

[25] Nonetheless, this court is entitled to look at the history of the case to determine if there is an action (see: *Jamir Hassan v. Kang Min* [1991] 3 CLJ 2490; [1991] 2 CLJ (Rep) 773; [1992] 2 MLJ 46) and to determine whether it can clearly be seen that the claim or answer is on the face of it is "obviously unsustainable" (see: *Bandar Builder Sdn Bhd (supra)*; and *Hi-Summit Construction Sdn Bhd v. Konsortium Lapangan Terjaya Sdn Bhd & Ors* [2014] 1 LNS 999; [2015] 2 MLJ 247).

[26] How do I determine that the plaintiff has a reasonable cause of action? I relied on the legal principle enunciated by the Court of Appeal in *See Thong & Anor v. Saw Beng Chong* [2012] 1 LNS 817. In essence, the Court of Appeal decided unequivocally that although para. 19(2) of O. 18 provides that no evidence shall be admissible when an application for striking out is done under sub-para. (1)(a), what this court shall do firstly is to look at the plaintiff's statement of claim. The test that I must apply at that instance is whether, on the face of that statement of claim, am I prepared to conclude that the plaintiff's cause of action is obviously unsustainable against D6?

[27] I had done exactly that. I had looked at the writ and the statement of claim filed by the plaintiff. I had seised myself of the history of the case against D6. I found that it is conspicuously clear that the claim by the plaintiff, on the face of it, is obviously unsustainable against D6. The writ disclosed no reasonable cause of action against D6. The main crux and reasons for the existence of the plaintiff's claim against D6, the *raison d'etre*, had been dealt with by the Court of Appeal in *Lim Hui Jin (supra)*.

[28] The decision and remarks by the Court of Appeal in *Lim Hui Jin (supra)* supports my finding that the plaintiff cannot be allowed to take D6 to task for its statutory compliance at that time against the plaintiff's account.

[29] A plethora of authorities had set out illustrations of the term "frivolous or vexatious", which include *res judicata* (see: *Abdul Hamid Rahmat & Anor v. Development & Commercial Bank Bhd & Anor* [1993] 1 CLJ 35; [1993] 1 MLJ 306; *Seruan Gemilang Makmur Sdn Bhd v. Badan Perhubungan UMNO Negeri Pahang Darul Makmur (via his secretary Dato' Ahmad Tajudin bin Sulaiman* [2010] 8 MLJ 57; *Datuk Ooi Han Eng v. Soh Huang Siah* [2010] 1 LNS 343; [2010] 5 MLJ 665).

[30] On what constitute *res judicata*, I relied on *Chemfert Sdn Bhd & Anor v. Lim Hua* [2010] 7 CLJ 491; [2010] 5 MLJ 228:

> *Res judicata* for this purpose is therefore not confined to the issues which the court is actually asked to decide, but covers issues or facts which are so clearly part of the subject matter of the litigation and so clearly could have been raised that it would be an abuse of the process of the court to allow a new proceeding to be started in respect of them: per Somervell LJ in *Greenhalgh v. Mallard* [1947] 2 All ER 255 at p 257 and quoted with approval in the Privy Council in *Yat Tung Investment Co Ltd v. Dao Heng Bank Ltd and another* [1975] AC 581; [1975] 2 WLR 690 (see also *SCF Finance Co Ltd v. Masri and another (No 3)* [1987] QB 1028; ; [1987] 1 All ER 194 (CA); *Bell v. Holmes* [1956] 3 All ER 449; [1956] 1 WLR 1359 and *Hoystead and others v. Commissioner of Taxation* [1926] AC 155.

[31] The Supreme Court decision in *Asia Commercial Finance v. Kawal Teliti* cited by both learned counsel are also of relevance.

[32] I cannot agree with the plaintiff's contention that the issue raised now against D6 cannot be anticipated at the time when the 2016 OS was filed and argued before the High Court. The plaintiff's argument on D6's breach of its statutory duty had been addressed by the Court of Appeal. Although the main issue before the Court of Appeal in *Lim Hui Jin* was on the release of monies, the finding on that issue was linked to D6's exercising of its statutory duties. It had been dealt with extensively by the court. The plaintiff is therefore estopped from raising this issue again now against D6.

[33] Utmost, I agree with the argument of D6's counsel that by operation of ss. 50(2) and 77 of AMLATFPUA and having been positively exonerated of any form of liability and wrongdoing by the Court of Appeal, D6 cannot be liable for any prosecution, action or suit. For convenience, the said sub-s. 50(2) and s. 77 are produced below:

> 50(2) A financial institution or any agent or employee of a financial institution shall not, on account of complying with an order of the Public Prosecutor under subsection (1), be liable to any prosecution under any law or to any proceedings or claim by any person under any law or under any contract, agreement, or arrangement, or otherwise.
>
> 77. No action, suit, prosecution or other proceedings shall lie or be brought, instituted, or maintained in any court or before any other authority against:
>
> (a) the competent authority or the relevant enforcement agency;
>
> (b) any director or officer of the competent authority or the relevant enforcement agency, either personally or in his official capacity; or
>
> (c) any person lawfully acting in compliance with any direction, instruction or order of a director or officer of the competent authority or the relevant enforcement agency, for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance of or in execution of, or intended pursuance of or execution of, this Act or any order in writing, direction, instruction or other thing issued under this Act if such act or statement was done or made, or was omitted to be done or made, in good faith.

[34] I agree with the submission by the plaintiff's counsel that s. 77 was never considered by the Court of Appeal in *Lim Hui Jin (supra)*. But as this provisions is raised by D6 before me, it is for this court to determine its applicability. I distinguished the facts in *Rosli Dahlan (supra)* and *Golden Vale (supra)* with the fact of the case before me. Here, as I had concluded earlier, the Court of Appeal had in *Lim Hui Jin (supra)* exonerated D6 from it 'wrongdoings' in continuing to freeze and seize the plaintiff's account at D6 after the expiration of the seizure order. Such exoneration would entitle D6 to invoke ss. 50(2) and 77 of AMLATFPUA as D6 had been declared an innocent party *ab initio*.

[35] Finally I ruled that the plaintiff's claim against D6 tantamount to re-agitating the same matter which had been finally adjudicated by the Court of Appeal, an action which is an abuse of the process of court: *Farlim Properties Sdn Bhd v. Goh Keat Poh & Ors And Other Appeals* [2003] 4 CLJ 505; [2002] 6 MLJ 171.

[36] The decision by this court on D6's application was pronounced on 21 June 2019. It has come to my knowledge when this grounds of judgment was being written on 18 July 2019, the Federal Court had laid down a decision that had, among others, affirmed the Court of Appeal's decision in *Lim Hui Jin (supra)* (See *Raqeem Rizqin Enterprise & Yang Lain lwn. Ketua Polis Negara & Satu Lagi* [2019] 8 CLJ 41). Zawawi Mohd Salleh FCJ in delivering the unanimous decision of the Federal Court held:

> [66] Kami bersetuju dengan hujahan peguam bela terpelajar perayu-perayu bahawa pembekuan dan penyitaan harta-harta perayu-perayu selepas tamat tempoh 12 bulan dari tarikh perintah-perintah pembekuan dan penyitaan dikeluarkan tanpa permohonan dibuat oleh pihak pendakwaan di bawah s. 56 Akta 613 adalah menyalahi undang-undang dan amat memprejudiskan perayu-perayu kerana mereka tidak mempunyai apa-apa jalan/kesempatan/peluang ("avenue") untuk menunjukkan sebab mengapa harta-harta itu tidak boleh dilucuthakkan. Subseksyen 56(3) secara jelas menyatakan bahawa jika tiada permohonan dibuat di bawah sub-s. 56(1) Akta 613, harta-harta itu hendaklah dilepaskan apabila tamat tempoh 12 bulan dari tarikh penyitaannya.
>
> [67] Kami berpendapat, berdasarkan keadaan yang wujud dalam kes ini, pihak responden-responden telah melanggar keadilan asasi perayu-perayu iaitu menafikan undang-undang lazim ("common law") di mana perayu-perayu hendaklah diberikan peluang untuk didengar sebelum sesuatu keputusan yang menjejaskan kepentingan mereka dibuat.

[37] It is my finding that the gist of the Federal Court's decision is that the authorities responsible for the freezing and seizure orders must be solely held responsible for their wrong decisions to continue with the freezing and seizure after the expiry date of the seizure order. In this case before me, the first to fifth defendants are the said authorities. The party, in this case the sixth defendant, CIMB, that took measures to implement the said wrong decisions, cannot be held equally responsible.

Conclusion

[38] As the plaintiff's action against D6 is obviously unsustainable, and the course of action is frivolous and vexatious and an abuse of the court process, the only option available to this court is to strike out the plaintiff's action against D6 pursuant to O. 18 r. 19(1)(a), (b) and (d) of ROC 2012.

[39] Based on the above considerations, I allow D6's application with costs against the plaintiff.